

the LEC to provide the required cost support or correct other deficiencies. However, because Section 204(a)(3) forecloses the Commission's deferral authority for tariffs eligible for streamlined treatment, the Commission must ensure that the transmittal contains all necessary information when it is filed. If a transmittal does not comply with the Commission's rules, the Commission must reject the transmittal without prejudice, and permit it to be refiled.

**B. Transmittals That Propose Both Rate Increases and Rate Decreases Must Be Filed on 15 Days' Notice**

As the Commission tentatively concludes in the Notice, tariff transmittals that propose both rate increases and decreases should be effective on 15 days' notice.<sup>33</sup> A customer should not have less time to review a rate increase simply because it is combined with a reduction in another rate. Moreover, transmittals that include both rate increases and decreases cannot be looked at in the aggregate or treated as largely in one category or the other because 1) customers purchase and mix rate elements in different ways, and 2) LECs occasionally apply individual rate elements listed as part of one service to other services not mentioned or referenced in that tariff. Thus, any rate increases must be filed in a separate transmittal subject to the longer 15-day notice period.

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<sup>33</sup>Notice at ¶26.

**C. LECs Should Provide Customers With Advance Notification of Tariff Changes**

The Commission should adopt its proposal that it maintain a list of interested parties and provide notice to them by e-mail when a LEC tariff is filed. LECs should also be required to fax advance notice that a transmittal will be filed to customers that have provided the LEC a contact name and fax number. The LEC should be required to send this notice at least 7 days before filing the transmittal with the Commission. Specific rates are not required as part of the notice, only the date on which the transmittal will be filed and the affected service. This requirement would not be burdensome to the LECs, many of whom already provide similar information to their customers, and would help interested parties respond to transmittals filed on short notice. Because no specific information regarding prices would be disclosed in advance, there would be no competitive repercussions.

**D. Filing Deadlines**

The Commission tentatively concludes that the statutory notice periods of 7 and 15 days refer to calendar days, not working or week days. It proposes to require that petitions against those LEC tariff filings that are effective within 7 or 15 days of filing must be filed within 3 days after the date of the tariff filing and replies 2 days after service of the petition.<sup>34</sup> The Commission also proposes that intermediate holidays and

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<sup>34</sup>Notice at ¶28.

weekends be included in computing time periods, and that all petitions and replies be hand-delivered to all affected parties.

There is no apparent reason for establishing the same filing deadline for both 7-day and 15-day transmittals. While the proposed three-day deadline may be necessary in the case of transmittals filed on seven days notice, the Commission should allow more time for interested parties to file petitions against rate increases filed on fifteen days' notice. If a transmittal were filed on a Friday, the three-day deadline would require interested parties to file their petitions the following Monday, allowing only one business day to prepare and file the petition. It would be a simple matter for the LECs to game their tariff filings to force petitioners into this highly-compressed schedule. To allow petitioners sufficient time to draft and file a petition, the Commission should either allow petitioners four days to file against rate increases filed on 15 days' notice or modify its proposed rule to allow petitioners a minimum of two business days.

Hand-delivery of petitions and replies to all interested parties is unnecessary. When it last examined the issue of filing deadlines under shortened notice periods, the Commission determined that facsimile service was sufficient.<sup>35</sup> The Commission could, if necessary, reiterate that all parties should use normal business practice to confirm that

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<sup>35</sup>In the Matter of Amendment to Section 1.773 of the Commission's Rules Regarding Pleading Cycle for Petitions Against Tariff Filings Made on 14 Days' Notice, Report and Order, 8 FCC Rcd 1683, 1688 (14 Day Order).

facsimile service has been accomplished.<sup>36</sup> Alternatively, the Commission could require parties receiving petitions or replies to confirm their delivery. If the Commission does require hand-delivery of petitions or replies, it must specify that hand-delivery is only required if both parties maintain a Washington, D.C. office or designated representative.

The hand delivery or facsimile service requirement must be applied to replies as well as petitions. Although the Commission's rules do not provide for a "surreply" opportunity, protesting parties nonetheless should have an opportunity to respond in a timely fashion to any replies that are non-responsive or unsupported, in order to allow the Commission to base its decision on whether to suspend and investigate on a complete record. Every opportunity should be made available to tariff challengers to air controversies arising from proposed tariff revisions before they become effective. If replies are not required to be served via facsimile or by hand delivery, such potential additional dialogue is lost.

**E. Public Involvement in the Tariff Review Process is Essential**

In the Notice, the Commission solicits comment on whether it should not provide a public comment period during the 7/15 days' notice period, and should provide for

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<sup>36</sup>*Id.*

comment only when a LEC tariff is suspended and investigated.<sup>37</sup> The Commission, however, provides no justification for this proposal.

As noted above, pre-effective review of dominant LEC tariffs, even those subject to streamlined review, is essential to protecting the public interest. It is beyond question that the basic scheme of the Act provides the public with a crucial role in the tariff review process and contemplates that the public will significantly assist the Commission in discharging its statutory responsibility to ensure that dominant carrier tariffs are lawful. In particular, under Section 204(a)(1), the Commission may suspend and investigate a tariff “upon complaint.” With the reduced notice periods prescribed by Section 204(a)(3), public involvement in the tariff review process is essential if the Commission is to have a complete record on which to base its decision on whether to suspend and investigate.

#### **F. Cost Support Must Be Made Public**

In the Notice, the Commission states that it believes that it will be unable to resolve requests for confidential treatment of cost data within the seven and fifteen day tariff review periods established by the 1996 Act.<sup>38</sup> The Commission solicits comment on whether it should routinely impose a standard protective order whenever a carrier

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<sup>37</sup>Notice at ¶28.

<sup>38</sup>Notice at ¶29.

claims in good faith that information qualifies as confidential under a relevant Commission precedent. The Commission also solicits comment on what terms such a standard protective order should include, whether it should identify in its rules the types of data that would not be eligible for confidential treatment, and what those types of data would be.

Many of the tariffs that will be filed pursuant to the streamlined review procedures of Section 204(a)(3) will be within-band filings by price cap LECs, which do not have to be accompanied by detailed cost support. Price cap LECs are only required to file detailed cost support with new service or restructuring tariffs and with out-of-band or above-cap filings. As out-of-band and above-cap filings constitute extraordinary circumstances, and raise significant questions of lawfulness, they should be rejected unless the cost support required by Sections 61.49 (c), (d), and (e) of the Commission's rules is filed on the record.

To the extent that the Commission's existing rules require the filing of cost support, Section 204(a)(3) does not compel any changes to these rules. In its comments in GC Docket 96-55,<sup>39</sup> which are incorporated by reference here, MCI demonstrated that Sections 203 and 412 of the Communications Act mandate the tariff-filing obligation, as

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<sup>39</sup>In the Matter of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Notice of Inquiry and Notice of Proposed Rulemaking, GC Docket No. 96-55, March 25, 1996.

well as the public nature of the tariffs.<sup>40</sup> Fundamentally, a tariff is a public document and must be supported with information as available to the public as the tariff itself. As the Common Carrier Bureau has noted, “[p]ersons who pay tariff rates have a compelling interest in obtaining access to data that are relevant to the rate computations.”<sup>41</sup> For this reason, “the Commission’s established practice is to require the public filing of cost support for tariffs.”<sup>42</sup>

Thus, the Commission should not allow incumbent LECs to make “good faith” confidentiality claims, or to evade the cost support requirements based on exaggerated assertions of potential competitive harm. The Commission should make clear that carriers seeking confidential treatment of cost data should first request, and be granted, a waiver of Sections 0.453(j) and 0.455(b)(11) of its rules. Tariff filings that do not comply with these rules, including filings subject to streamlined review under Section 204(a)(3),

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<sup>40</sup>MCI Comments at 15-16.

<sup>41</sup>Annual 1989 Access Tariff Filings: Petitions for Waiver Regarding Proprietary Treatment of Information Contained in the 1989 Tariff Review Plan, 3 FCC Rcd 7200, 7202 (Common Carrier Bureau 1988).

<sup>42</sup>Commission Requirements for Cost Support Material To Be Filed with Open Network Architecture Access Tariffs, 7 FCC Rcd 1526 (Common Carrier Bureau 1992), review denied, 9 FCC Rcd 180 (1993) (SCIS Disclosure Review Order), recon. denied, Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, FCC 95-27 (released February 14, 1995), appeal pending sub. nom. MCI Telecommunications Corp. v. FCC, No. 95-1212 (D.C. Cir. filed April 17, 1995).

should be rejected. The Commission should, in no event, continue its current practice of granting sua sponte waivers of its rules requiring the public filing of cost support.<sup>43</sup>

## **VI. PCI Calculations Should Be Filed In Advance Of The Annual Access Filing**

The Commission should adopt its proposal that price cap LECs file their Tariff Review Plan (TRP) in advance of their annual access filing.<sup>44</sup> Because questions of lawfulness generally involve a LEC's PCI calculations, not the rates themselves, the Commission and the public should have sufficient time to determine whether the LEC has correctly applied Commission rules in calculating its new PCIs. The LECs should provide the same charts and supporting information as they have in the past, but would not be required to file the actual rates until 7 or 14 days prior to July 1.

The PCI calculations do not constitute a tariff or even cost support for a particular tariff revision. They simply provide information that the Commission needs to evaluate subsequent rate changes, including, but not limited to, the annual access filing. That the calculation of PCIs and the filing of rates are severable is confirmed by the fact that the Commission only requires LECs' annual access filing to amend rate levels if rate level changes are needed to keep the API below the PCI or to ensure that prices are within the

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<sup>43</sup>See, e.g., In the Matter of Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal Nos. 2547, 2552, Order, June 21, 1995.

<sup>44</sup>Notice at ¶31.



applicable bands.<sup>45</sup> It is clear that the Commission can separate the filing of the PCI calculations from the annual access filing, and require that the PCI calculations be filed a minimum of 90 days prior to July 1. Similarly, it can require mid-year adjustments to the PCIs due to exogenous cost changes to be filed separately from actual rate changes.

## **VII. Investigations**

Section 402 of the 1996 Act amends section 204(a) of the Act, effective February 8, 1997, to provide that the Commission shall conclude all hearings initiated under Section 204 within five months after the date that the tariff becomes effective. The Commission solicits comment on whether it should establish procedural rules to expedite the hearing process in light of the shortened period in which the Commission must complete tariff investigations. The Commission asks whether it should establish time periods for pleading cycles and page limits for pleadings and exhibits.<sup>46</sup>

The primary impact of the shortened notice period is that it will require the Commission to write the designation order in time to allow it to complete the pleading cycle and write an order concluding the investigation within five months of the effective date of the tariff. It is not necessary for the Commission's rules to specify time periods for the pleading cycle or page limits for pleadings and exhibits; these can be addressed in

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<sup>45</sup>Price Cap Further Notice, 3 FCC Rcd at 3369.

<sup>46</sup>Notice at ¶33.

the designation order. To expedite investigations, the designation order could specify that parties file proposed orders, as the Commission suggests in the Notice.<sup>47</sup>

## **VIII. Additional Issues**

### **A. Complaint Procedures**

The Commission has restricted this rulemaking to the implementation of the streamlined pre-effective tariff review procedures contained in Section 402(b)(1)(A) of the 1996 Act. In Section 402(b)(1)(B) of the 1996 Act, however, Congress also shortened the period in which the Commission must resolve complaints. Section 208(b), as amended by the 1996 Act, requires that the Commission issue an order within 5 months after the date on which a complaint is filed. The Commission, which was not able to meet the old time limit for resolving complaints, must institute procedures for expediting the handling of complaints. Under either of the Commission's proposed interpretations of "deemed lawful," but especially the interpretation that would change the legal status of tariffs that are not suspended, the complaint process will assume far greater importance in ensuring that dominant LEC tariffs are just, reasonable, and nondiscriminatory.

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<sup>47</sup>Id.

**IX. Conclusion**

MCI requests that the Commission promulgate regulations implementing the LEC tariff streamlining provisions of Section 402(b)(1)(A) of the Communications Act that are consistent with the above comments.

Respectfully submitted,  
MCI TELECOMMUNICATIONS CORPORATION

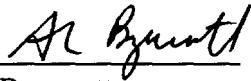
A handwritten signature in black ink, appearing to read "Al Buzacott".

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October 9, 1996

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on October 9, 1996.

A handwritten signature in black ink, appearing to read "Alan Buzacott", is written over a horizontal line.

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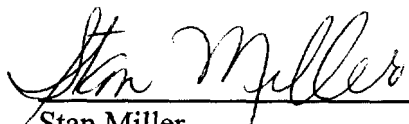
## **CERTIFICATE OF SERVICE**

**I, Stan Miller, do hereby certify that copies of the foregoing "MCI Comments" were sent via first class mail, postage paid, to the following on this 9th day of October, 1996.**

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